



**MINUTES OF THE
LAND RECLAMATION COMMISSION
TELECONFERENCE MEETING**

June 3, 2003

Chairman Ted Smith called the meeting to order at 9:37 a.m. at the Missouri Department of Natural Resources, 1738 East Elm Street, Jefferson City, Missouri.

Commissioners Present: Ted Smith; Dr. Carol Wicks; Jim Hull; and Gerald Ross.

Staff Present: Larry Coen; Tom Cabanas; Richard Hall; and Shirley Grantham.

Others Present: Amy Randles, Attorney General's Office.

1. IN THE MATTER OF CONTINENTAL COAL, PANTHER CREEK, HEARING REQUEST, APPEAL OF STAFF DIRECTOR'S DECISION ON NOTICES OF VIOLATION

(Attachment 1)

Mr. Hall stated there were four Notices of Violation issued to Continental Coal—P99-01-04, P99-01-05, P99-01-06, and P99-01-07. The Staff Director held an informal conference at the company's request. The Staff Director rendered his decision contained in Attachment 1. The company is appealing his decision to the Commission.

Ms. Randles stated Continental Coal submitted its request for hearing on May 22, 2003. In unrelated litigation filed in the Circuit Court of Cole County, which was a different type of case, Continental Coal placed a lot of emphasis on a provision in the law regarding the holding of a hearing within 30 days. There is a similar provision in the law on appeals from Notices of Violation. She stated she sent a letter to the company's legal counsel, stating she did not feel they had a right to a hearing within 30 days. Her letter recognized that they might disagree and therefore asked whether Continental Coal would waive any right the company might have to have a hearing within 30 days. After some back and forth, Continental Coal's counsel indicated that Continental Coal would waive the 30-day provision for a period of time ending September 25, 2003. Therefore, it would be best for the Commission to schedule a hearing before September 25, 2003. If the Commission does not wish to conduct the hearing itself, it probably would not want to set a hearing date, but select a hearing officer and they will have to schedule a hearing before September 25, 2003.

Mr. Smith noted that the issue that the Commission has to discuss here today is whether it wishes to hear the matter as a full Commission, refer it to a hearing officer, or refer it to the Administrative Hearing Commission.

Mr. Coen noted that it is the Department of Natural Resources' preference that matters be referred to the Administrative Hearing Commission rather than a private attorney.

Mr. Smith asked what the nature was of the four Notices of Violation that were issued to Continental Coal?

Mr. Hall stated for Notice of Violation (NOV) P99-01-04, it was issued on February 7, 2003, resulting from an inspection conducted on January 21, 2003, for the company's failure to properly construct a design structure. That is, the operator failed to construct the rock outlet of Overland Diversion 2 and failed to construct Pond DP-05, a final water impoundment, to the approved designs. For NOV P99-01-05, following an inspection on January 21, 2003, the violation was issued on February 14, 2003, for the company's failure to follow the approved operations plan in that the company failed to extract coal from several mine blocks that were shown on the operations plan as to be mined and only partially mined several mine blocks. The language in this particular violation was modified and the modification changed the nature of the violation by deleting the language about the operator failing "to extract coal from several mine blocks that were shown on the operation plan as to be mined and only partially mined several other mine blocks" to "the operator failed to follow the approved operations plan." Mr. Hall stated Notice of Violation P99-01-06 was issued on February 14, 2003, following an inspection on January 21, 2003. The violation was issued for the company's failure to follow the operation plan and failure retain coal processing waste within the approved coal processing area bonded at \$10,000.00 per acre for this purpose. That is, the operator did not construct the coal processing area so that water drainage flows, as designed, resulting in the processing area sediment trap not being properly placed. Also, the sediment trap was not properly maintained, thereby allowing coal fine material from the processing area to be discharged into a small pit located south of the processing area. Notice of Violation P99-01-07 was issued on February 14, 2003, as a result of the January 21, 2003, inspection which indicated the company had conducted mining operations off the permitted and bonded area. That is, the operator has moved several pieces of mining equipment off the permitted area, several large pieces of equipment, as well as scattered miscellaneous equipment, was noted off the permit area.

Mr. Smith asked when the Staff Director held the informal conference with the company, what were their comments regarding the settlement of these violations? Why would the company not want to resolve these issues.

Ms. Randles stated the staff and the Staff Director are now parties before the Commission in this matter. Although the company's attorney had notice of the teleconference meeting today, they did not really know about it until yesterday. She did not feel it was appropriate at this time to discuss the merits of the four Notices of Violation and whether the company had asserted proper ground for appealing them.

Mr. Smith asked whether the Commission has acted on these four Notices of Violation?

Mr. Hall stated these four Notices of Violation have never been presented to the Commission.

Mr. Ross made the motion that the Commission grant a hearing regarding the above four Notices of Violation and refer the matter to the Administrative Hearing Commission to conduct the hearing by September 25, 2003; if they cannot, then another hearing officer will have to be pointed. Dr. Wicks seconded; motion carried unanimously.

Mr. Ross made the motion the meeting be adjourned. Mr. Hull seconded; motion carried unanimously.

The meeting ended at 9:59 a.m.

Respectfully submitted,



Chairman